

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CONTEL CELLULAR OF	)	
KENTUCKY, INC. FOR ISSUANCE OF A	)	
CERTIFICATE OF PUBLIC CONVENIENCE AND	)	
NECESSITY TO CONSTRUCT AN ADDITIONAL	)	CASE NO. 93-378
CELL FACILITY IN THE LOUISVILLE,	)	
KENTUCKY METROPOLITAN STATISTICAL AREA	)	
(BARDSTOWN ROAD/DOWNTOWN LOUISVILLE	)	
EAST CELL FACILITY)	)	

O R D E R

On October 18, 1993, Contel Cellular of Kentucky, Inc. ("Contel Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower in the Louisville Metropolitan Statistical Area ("Louisville MSA"). The proposed cell site consists of a monopole antenna tower not to exceed 147 feet in height, with attached antennas, to be located at 2446 Bardstown Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 22.25" by West Longitude 85° 41' 12.86".

Contel Cellular has provided information regarding the structure of the monopole, safety measures, and antenna design criteria for the proposed cell site. Based upon the application, the design of the monopole and foundation appears to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code, with reference to earthquakes, winds, and tornadoes.

Pursuant to KRS 100.324(1), the proposed cell site's construction is exempt from local zoning ordinances. However, Contel Cellular has notified the Louisville/Jefferson County Planning Commission of the proposed construction. Contel Cellular has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the proposed cell site. Both applications have been approved. The FAA decision reduced the maximum allowable height of the monopole from 163 feet to 147 feet. On December 2, 1993, Contel Cellular amended its application to reflect the proposed monopole's new height. The KAZC decision is further discussed below.

Contel Cellular has filed notices verifying that each property owner and resident within 500 feet of the proposed cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners and residents of their right to intervene. The Commission received numerous protests from nearby property owners objecting to the proposed construction. Several protestors intervened and requested a public hearing in this proceeding which was held July 13, 1994 at the Commission's offices in Frankfort. The primary concerns of protests filed with the Commission related to the aeronautical safety of the proposed cell site. Several objectors indicated that the proposed cell site would constitute a hazard to air traffic in the area and as a result would endanger the lives and property of surrounding residents.

J. Mark Grundy, an attorney, private pilot, and principal intervenor in this proceeding, petitioned the KAZC to conduct a hearing regarding its decision on Contel Cellular's application for construction of the proposed monopole. Mr. Grundy's motion was granted and an evidentiary hearing was held February 7, 1994 at the offices of the KAZC. On June 9, 1994, the KAZC issued an order dismissing Mr. Grundy's appeal and concluding that the permit to construct the proposed monopole does not create an obstacle to the use of navigable air space and does not create an aeronautical hazard. The KAZC order was not appealed and is final.

Other issues presented by the Intervenor at the Commission's July 13, 1994 hearing included concerns regarding devaluation of property, potential safety risks due to exposure to radio frequency emissions, aesthetic impact and incompatibility with existing development in the area, and obstruction of traffic in the parking lot where the proposed monopole is to be constructed.

Contel Cellular provided extensive testimony supporting the necessity of the proposed cell site. The monopole is necessary to increase cellular service coverage and capacity in the area. Other sites were considered, including two recommended by Intervenor, but engineering evaluations determined that they would not provide the desired coverage. Contel Cellular stated that existing towers and buildings receive priority attention during the real estate search, but no acceptable structures were available. Contel Cellular responded to the concerns expressed by the Intervenor as follows:

1) A study conducted in accordance with applicable appraisal standards by a certified appraiser indicated that the proposed cell site will have no effect on the value of residences in and around the neighborhood;

2) Based on computations and testimony of a radio frequency engineer, the proposed cell site will not expose the public to excessive levels of radio frequency radiation as defined by applicable federal standards;

3) The proposed cell site property is zoned C-2 for which a commercial antenna tower is a permitted use;

4) The proposed construction will not compromise any existing easements and there is no express permission for the heavy truck traffic about which an Intervenor testified.

The Commission finds that Contel Cellular has shown that the proposed location for the cell site is necessary, does not constitute a safety hazard, and should not unduly affect aesthetics or property values in the surrounding area. However, the Commission finds that reasonable measures should be taken to protect the proposed monopole from heavy truck traffic in the parking area. Parking barriers sufficient to protect the monopole from a collision should be installed.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply

with this mandate, Contel Cellular should notify the Commission if it does not use this antenna tower to provide cellular radio telecommunications services in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by Contel Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Contel Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the proposed cell site in the Louisville MSA under its currently approved tariff.

IT IS THEREFORE ORDERED that:

1. Contel Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate a monopole antenna tower not to exceed 147 feet in height, with attached antennas, to be located at 2446 Bardstown Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 22.25" by West Longitude 85° 41' 12.86".

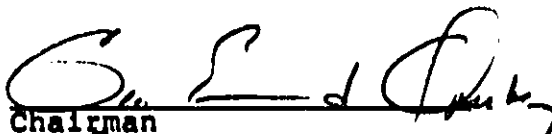
2. Contel Cellular shall install parking barriers sufficient to protect the monopole from being struck by heavy trucks which use the parking area.

3. Contel Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and utility

service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 19th day of September, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director